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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1677**

Scott Snyder,  
Respondent,

vs.

Unisys Corporation,  
Relator,

Department of Employment and Economic Development,  
Respondent.

**Filed July 20, 2010  
Reversed  
Peterson, Judge**

Department of Employment and Economic Development  
File No. 21743743

Scott Snyder, Chanhassen, Minnesota (pro se respondent)

Dawn C. Van Tassel, Maslon Edelman Borman & Brand, LLP, Minneapolis, Minnesota  
(for relator Unisys Corporation)

Lee B. Nelson, Amy R. Lawler, Department of Employment and Economic  
Development, St. Paul, Minnesota (for respondent Department of Employment and  
Economic Development)

Considered and decided by Lansing, Presiding Judge; Peterson, Judge; and  
Stauber, Judge.



## **UNPUBLISHED OPINION**

**PETERSON**, Judge

Relator Unisys Corporation challenges the determination by an unemployment law judge (ULJ) that respondent Scott Snyder is ineligible to receive state unemployment benefits because the payments he receives from relator's supplemental-unemployment-benefits plan are "wages" under Minn. Stat. § 268.035, subd. 29(a) (2008). Because we conclude that the payments are excluded from the statutory definition of wages, we reverse.

### **FACTS**

Snyder was employed by Unisys from 1979 until he was laid off on December 31, 2008. Upon his separation from Unisys, Snyder began receiving payments under the Unisys Supplemental Unemployment Benefits Plan (SUB Plan). Snyder received biweekly payments of \$3,380.47 and was authorized to receive payments for up to 26 weeks. The SUB Plan is administered by Total Management Solutions (TMS).

Snyder applied for unemployment benefits, and respondent Department of Employment and Economic Development (DEED) determined that his weekly benefit amount would be \$566. But DEED also determined that Snyder was ineligible to receive benefits because he received severance payments from Unisys. Snyder appealed the determination, and a hearing was held before a ULJ. The ULJ determined that an applicant who is entitled to receive severance pay or any other payments that are considered wages is not eligible to receive unemployment benefits. The ULJ determined further that although supplemental unemployment benefits paid under a plan established



by an employer are excluded from the statutory definition of wages if the plan meets certain criteria, the Unisys SUB Plan did not meet these criteria because it did not require Snyder to apply for all available state or federal unemployment benefits. Therefore, the ULJ concluded, payments that Snyder received under the SUB Plan were not excluded from the definition of wages. The ULJ also concluded that the payments were not excluded from the statutory definition of wages because the Unisys SUB Plan was intended to avoid payment of social security obligations. Finally, the ULJ concluded that because Snyder's SUB Plan payments exceeded the amount of his unemployment benefits, he is not eligible to receive unemployment benefits.

On behalf of Snyder, Unisys sought reconsideration of the ULJ's decision and argued that because its SUB Plan has been specifically tailored to comply with the Minnesota unemployment-insurance law, Snyder should be eligible to receive benefits. The ULJ determined that because (1) there was no evidence offered showing that Unisys requires employees to apply for all unemployment benefits available and, instead, merely requires employees to be eligible for benefits; and (2) a stated purpose of the SUB Plan is to avoid unemployment and social security taxes, payments under the SUB Plan are not excluded from the statutory definition of wages. Based on these determinations, the ULJ concluded that the initial decision is legally and factually correct. This certiorari appeal followed.

## **DECISION**

This court may affirm the ULJ's decision, remand the case for further proceedings, or reverse or modify the decision if the relator's substantial rights "may have been



prejudiced because the findings, inferences, conclusion, or decision are . . . affected by . . . error of law,” “unsupported by substantial evidence in view of the entire record as submitted,” or “arbitrary or capricious.” Minn. Stat. § 268.105, subd. 7(d)(4)-(6) (2008). In determining whether there is substantial evidence for a ULJ’s findings, we will view those findings “in the light most favorable to the decision.” *Skarhus v. Davanni’s Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006).

Unisys argues that the ULJ erred by concluding that the SUB Plan payments Snyder received following his separation from employment are not supplemental unemployment benefits, which are excluded from the definition of wages. We review issues of statutory interpretation de novo. *Samuelson v. Prudential Real Estate*, 696 N.W.2d 830, 831 (Minn. App. 2005).

Minn. Stat. § 268.085, subd. 3(a)(2) (Supp. 2009), provides that an applicant for unemployment benefits “is not eligible to receive unemployment benefits for any week with respect to which the applicant is receiving, has received, or has filed for payment, equal to or in excess of the applicant’s weekly unemployment benefit amount” when that payment is in the form of

severance pay, bonus pay, sick pay, and any other payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment, *but only if the payment is considered wages at the time of payment under section 268.035, subdivision 29* [.]

(Emphasis added.)



Under Minn. Stat. § 268.035, subd. 29(a) (2008),

“Wages” means all compensation for services, including commissions; bonuses, awards, and prizes; severance payments; standby pay; vacation and holiday pay; back pay as of the date of payment; tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer; sickness and accident disability payments, *except as otherwise provided in this subdivision. . . .*

(Emphasis added.)

One of the exceptions to the definition of “wages” applies to

supplemental unemployment benefits paid under a plan established by an employer, that makes provisions for employees generally or for a class or classes of employees for the supplementing of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument if the plan provides benefits that are only supplemental to, and does not replace or duplicate any state or federal unemployment benefits. The plan must provide that funds are paid solely for the supplementing of state or federal unemployment benefits. *The plan must provide that any supplemental benefits are payable only if the applicant<sup>1</sup> has applied for all unemployment benefits available.* The plan must provide that supplemental benefits, when combined with the applicant’s weekly unemployment benefits available, may not exceed the applicant’s regular weekly pay. The plan must not allow the assignment of supplemental benefits or payment upon the employee’s withdrawal from the plan, or quitting of employment or the termination of the plan. *The plan must not require any consideration from the applicant and must not be designed for the purpose of avoiding the payment of Social Security obligations, or unemployment taxes on money disbursed from the plan[.]*

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<sup>1</sup> “‘Applicant’ means an individual who has filed an application for unemployment benefits and has established or is pursuing the establishment of a benefit account.” Minn. Stat. § 268.035, subd. 2a (2008).



Minn. Stat. § 268.035, subd. 29(a)(12) (emphasis added).

The ULJ determined that the payments Snyder received from the SUB Plan did not meet the requirements for this exception. The ULJ stated:

Snyder was not required to apply for all available state or federal unemployment benefits. The information provided to Snyder, in the form of “frequently asked questions,” states that SUB payments are offset by unemployment compensation, whether or not the employee applies for such benefits. The plan further states that employees are eligible for SUB payments if they are unemployed and eligible for state benefits. There is no requirement that Snyder file for state unemployment benefits; he only must be eligible. Snyder would not be ineligible for payment under the SUB Plan if he had failed to file for state unemployment benefits. Therefore, the SUB Plan does not meet the definition of supplemental unemployment benefits, as defined by statute. Further, TMS states on its website that its SUB Plans are used to “supplement state unemployment benefits and to reduce FICA and FUTA taxes otherwise payable in typical severance arrangements.” Minnesota Statute section 268.035, subdivision 29, paragraph (a), clause 12, explicitly excludes plans that are intended to avoid payment of Social Security obligations. Therefore, payments made to [Snyder] under the employer’s SUB Plan are wages as defined under the Minnesota Unemployment Insurance Law.

*Applicant Must Apply For Unemployment Benefits*

Although it appears that the ULJ is correct that the SUB Plan does not explicitly require that Snyder must apply for unemployment benefits, we do not agree that the failure to explicitly state this requirement in the plan means that the SUB Plan does not meet the requirement in subdivision 29(a)(12) that “[t]he plan must provide that any supplemental benefits are payable only if the applicant has applied for all unemployment benefits available.”



As the ULJ determined, the SUB Plan provides that to be eligible for SUB Plan benefits, an employee must be eligible for unemployment benefits. To be eligible to receive unemployment benefits for any week, Snyder must meet the seven requirements listed in Minn. Stat. § 268.085, subd. 1 (Supp. 2009). The first of these requirements is that “the applicant has filed a continued request for unemployment benefits for that week.” Minn. Stat. § 268.085, subd. 1(1). Consequently, Snyder cannot be eligible for unemployment benefits if he does not apply for benefits, and the SUB Plan requirement that an applicant for SUB Plan benefits must be eligible for unemployment benefits necessarily includes a requirement that Snyder must apply for unemployment benefits. *See also* Minn. Stat. § 268.069, subd. 1(1) (Supp. 2009) (requiring commissioner to pay unemployment benefits from trust fund to applicant who has filed an application for benefits and established a benefit account). Therefore, the SUB Plan meets the statutory requirement that benefits are payable only if the applicant has applied for all unemployment benefits available.<sup>2</sup>

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<sup>2</sup> Exhibit 7 in the record indicates that a laid-off employee who is not eligible to receive unemployment benefits could be eligible to receive SUB Plan benefits if the reason the employee is not eligible for state unemployment benefits is that the employee does not have sufficient employment to be covered by the unemployment compensation system or that the employee has exhausted the employee’s benefits. In either of these situations, unemployment benefits are not available. Consequently, even if the laid-off employee does not apply for unemployment benefits, the SUB Plan could still meet the requirements of Minn. Stat. § 268.035, subd. 29(a)(12), because the statute requires that the plan provide that the applicant has applied for all unemployment benefits available.



*Designed for the Purpose of Avoiding Social Security Obligations*

The ULJ also determined that Snyder's SUB Plan payments are not excluded from the definition of wages under Minn. Stat. § 268.035, subd. 29(a)(12), because the statutory exclusion for supplemental unemployment benefits does not apply to plans that are intended to avoid payment of social security obligations and the TMS website states that TMS's "SUB Plans are used to 'supplement state unemployment benefits and to reduce FICA and FUTA taxes otherwise payable in typical severance arrangements.'"

Unisys argues that the ULJ could not properly consider evidence taken from TMS's website because the evidence was not received into the record during the hearing before the ULJ. "Only evidence received into the record of any hearing may be considered by the unemployment law judge." Minn. R. 3310.2922 (2009). DEED argues that because the ULJ left the record open until the end of the day to allow Snyder to submit additional information about the SUB Plan, the ULJ was also allowed to look into the agreement between DEED and Unisys,<sup>3</sup> as Snyder had asked the ULJ to do. But DEED does not cite any authority that permits a ULJ to consider evidence that was not submitted during a hearing simply because the hearing record has been left open. Therefore, the ULJ should not have considered any evidence that was not received into the record of the hearing.

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<sup>3</sup> It appears from the transcript of the hearing before the ULJ that neither Snyder nor the ULJ was fully aware of how the SUB Plan worked, and Snyder was under the impression that there was some sort of an agreement between Unisys and the State of Minnesota.



Furthermore, the statute provides that in order for Snyder's SUB Plan payments to be excluded from the definition of wages, the SUB Plan "must not be designed for the purpose of avoiding the payment of Social Security obligations, or unemployment taxes on money disbursed from the plan." Minn. Stat. § 268.035, subd. 29(a)(12). Even if information from the TMS website had been received into the record of the hearing, it is not apparent how it could establish that the SUB Plan was designed for the purpose of avoiding the payment of social security obligations. The record demonstrates that TMS administers the SUB Plan, but it does not demonstrate that TMS played a role in designing the plan that would establish a foundation for TMS to state the purpose for which the SUB Plan was designed. We, therefore, conclude that the record is not sufficient to support the ULJ's determination that Snyder's SUB Plan payments are not excluded from the statutory definition of wages because the SUB Plan was intended to avoid payment of social security obligations.

Because we conclude that the ULJ erred in determining that the record supports a determination that Snyder's SUB Plan payments do not meet the requirements of Minn. Stat. § 268.035, subd. 29(a)(12), to be excluded from the definition of wages, we need not address relator's additional arguments.

**Reversed.**